INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
Argument	6
The court below properly held that *Wickard* v. *Filburn* controls the present case	6
A. The *Filburn* case is not distinguishable on grounds of estoppel	7
B. The challenge to the facts stipulated in the *Filburn* case	11
1. The percentage of wheat moving in interstate and foreign commerce	12
2. The existence of excessive supplies of wheat	15
3. Comparison of American and world prices	17
Conclusion	22

CITATIONS

Cases:	
Beckman v. *Mall*, 317 U. S. 597	5
Chicago Board of Trade v. *Olsen*, 262 U. S. 1	12
Frothingham v. *Mellon*, 262 U. S. 447	21
Grain Proportionals, Ex-Barge to Official Territory, 246 I. C. C. 353	19
Wickard v. *Filburn*, 317 U. S. 111	4, 5, 7, 8, 9, 11, 17, 19, 21
United States Statutes:	
Act of May 26, 1941 (par. 10 (c), 55 Stat. 203, 7 U. S. C., Supp. 1, Section 1340 (10) (c))	10
Agricultural Adjustment Act of 1938, as amended, 7 U. S. C., Section 1281, *et seq.*:	
Section 301 (b) (16) (A)	15
Section 302	18
Section 303	10
Section 331	15
Section 335	15
Soil Conservation and Domestic Allotment Act, as amended, (16 U. S. C., Section 590g–590q)	10
Act of August 24, 1937, (50 Stat. 752, 28 U. S. C., Section 380a)	2

531422—43——1

	Page
English Statutes:	
4 George VI, c. 25	19
6 George VI, c. 10	19
Miscellaneous:	
H. Rept. 1645, 75th Cong., 2d sess	15
North Atlantic UK Freight Conference Schedule of Minimum Rates and Tariff Rules (No. 38, p. 0), *War Emergency Rates*	19
Patton, *Wartime Wheat Policy in Canada*, 24 Journal of Farm Economics 772 (November 1942)	19
United States Department of Agriculture:	
Agricultural Marketing Service, *Midmonth Local Market Price Report* (June 1941), p. 5	20
Bureau of Agricultural Economics, *The Wheat Situation* (June 1941), p. 7	20

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 954

KENNETH BENDER, ET AL., APPELLANTS

v.

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE OF THE UNITED STATES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLEE

OPINION BELOW

The court below rendered no opinion.

JURISDICTION

The final judgment of the district court was entered March 11, 1943. A petition for appeal was filed and allowed on March 17, 1943. Jurisdiction is conferred on this Court by Section 3 of the Act of August 24, 1937 (50 Stat. 752, 28 U. S. C., Section 380a). Probable jurisdiction was noted May 24, 1943.

QUESTIONS PRESENTED

1. Whether this case is distinguishable in any material respect from *Wickard* v. *Filburn*, 317 U. S. 111.

2. Whether the wheat quota provisions of the Agricultural Adjustment Act of 1938, as amended on May 26, 1941, are constitutional.

STATUTE INVOLVED

The statute involved is the Agricultural Adjustment Act of 1938 (52 Stat. 31, 7 U. S. C., Section 1281, *et seq.*), as amended (52 Stat. 202, 54 Stat. 727, 1211, 7 U. S. C., Section 1301; 52 Stat. 820, 7 U. S. C., Section 1302; 52 Stat. 203, 775, 53 Stat. 1125, 1126, 54 Stat. 232, 7 U. S. C., Sections 1333, 1334, 1335; 55 Stat. 203, 872, 7 U. S. C., Supp. I, Section 1340).

STATEMENT

This is an appeal from the judgment of a statutory three-judge district court convened pursuant to Section 3 of the Act of August 24, 1937 (50 Stat. 752, 28 U. S. C., Section 380a). The appellee is the Secretary of Agriculture. The appellants are wheat producers in Ohio, Kansas, Pennsylvania, and Michigan.

On April 15, 1942, appellants filed their complaint in the United States District Court for the District of Columbia (R. 1–11). They alleged that they were farmers, that they produced winter wheat, and that some of this wheat was consumed by

them and their families, some fed to livestock and poultry, some kept for seed, and some sold [1] locally (Paragraph 5). They further alleged that each had planted a greater wheat acreage than was allotted to him under the Agricultural Adjustment Act, as amended May 26, 1941, that the Secretary was claiming a lien on their wheat crops and was threatening to collect the statutory penalty of 49¢ per bushel (Paragraphs 14–16). It was alleged that their activities did not constitute or burden interstate commerce, that the greater portion of the wheat produced each year in the United States did not move in interstate or foreign commerce, and that in recent years there had not "been any excessive production of wheat" (Paragraphs 17–20). Appellants averred that the wheat provisions of the Agricultural Adjustment Act, as amended May 26, 1941, violated "the Constitution as a whole," and in particular Article I, Section 1, Article I, Section 7, Article I, Section 8, Article I, Section 9, Article IV, Section 2, the Fifth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment, the Tenth Amendment, and the Thirteenth Amendment (Paragraph 30).

[1] The tender of proof shows that some, but not all, of appellants offered to testify that they did not sell any of the wheat they produced. It is not urged, nor could it be, that this provides any reason for treating the wheat consumed on their farms differently from the wheat consumed on the farm by farmers who sell some of their wheat.

Appellants also alleged that the Secretary and his agents had acted unlawfully in conducting the referendum of wheat farmers required by the Act, and that the "whole referendum election was fraudulent and a farce" (Paragraph 21–24). This point, as well as all other contentions relating to the conduct of the Secretary (as contrasted with those relating to the validity of the statute), was expressly waived by appellants during their oral presentation to the district court and has been abandoned. See appellants' Assignment of Errors (R. 18) and Statement of Points Relied On (pp. 20–21), neither of which raise any such contentions.

Appellants prayed that the wheat provisions of the Act be held unconstitutional and that the Secretary be enjoined from collecting any penalties on their wheat.

The Secretary answered the complaint, setting up as his Second and Third Defenses (R. 15) that the Act was constitutional and that the complaint failed to state a claim upon which relief could be granted.

After the pleadings were filed in the district court, this Court in *Wickard* v. *Filburn,* 317 U. S. 111, decided November 9, 1942, upheld the validity of the wheat provisions of the Act, as amended May 26, 1941. The Court found that the statute, as applied to wheat consumed on the farm on which it was produced, was valid under the commerce clause and not violative of the due process

clause either generally or because the quotas had been fixed after the 1941 winter wheat crop had been planted. In the *Filburn* case counsel for appellants here filed a brief *amicus curiae* making substantially the same contentions as are here presented.

On November 16, 1942, this Court affirmed the judgment of a three-judge court for the District of Kansas in a case involving the same questions. *Beckman* v. *Mall,* 317 U. S. 597. Although the district court in the *Beckman* case had dismissed the complaint for lack of proper parties, this Court affirmed that decision on the merits "on the authority of *Wickard* v. *Filburn, ante,* p. 111, without consideration of the grounds relied upon by the court below for dismissing the bill." Beckman, the plaintiff in that case, is one of the plaintiffs here, and the complaint in that case was *identical* in every material respect with the complaint in the case at bar.

The present case came on for hearing in the district court on January 21, 1943. The Government requested that its Second and Third Defenses, which raised points of law and in substance constituted a demurrer, be heard in advance of the taking of evidence. The court, however, permitted counsel for the plaintiffs, appellants here, to make a statement as to what his witnesses would testify. On March 11, 1943, the court found "that the complaint presents no issue which has not been decided by the Supreme

Court of the United States in *Wickard* v. *Filburn*, 63 S. Ct. 82, and *Beckman, et al.* v. *Mall, et al.*, 63 S. Ct. 199, and the second and third defenses in the defendant's answer should be sustained." (R. 16.) The complaint was accordingly ordered dismissed.

ARGUMENT

THE COURT BELOW PROPERLY HELD THAT WICKARD *v.* FILBURN CONTROLS THE PRESENT CASE

Appellants argue (brief,[2] pp. 6, 8–9) that the *Filburn* case did not uphold the validity of the wheat quota provisions of the Agricultural Adjustment Act but decided only that Filburn, by reason of estoppel, was entitled to no relief. While appellants assert that the *Filburn* opinion contains questionable dictum (p. 8) on the constitutional issue, they "do not believe all of the language in that decision is the matured judgment of the Court" (p. 9). Appellants ask that, if the Court feels that it did pass upon the constitutional question, the *Filburn* case be reconsidered (p. 30)—in other words, that if the opinion means what it seems to say, it should be overruled.

Appellants also attack the findings of Congress as to the movement of wheat in interstate commerce, the existence of an abnormal supply of wheat, and the effect of any such supply upon interstate commerce. They offer to prove that

[2] The reference is to appellant's brief in opposition to the Government's motion to affirm.

some of the items in the stipulation of economic facts in the *Filburn* case, which supported the congressional findings, were erroneous. Appellants do not, however, at any point indicate how the corrections which they suggest would have had any effect upon the reasoning of this Court's opinion or the result reached.

We do not think it necessary in this memorandum to reargue the constitutionality of the wheat quota provisions of the Agricultural Adjustment Act. The reasoning in support of their validity is clearly set forth in the Court's unanimous opinion in the *Filburn* case, and the subject is discussed fully in the Government's two briefs in that case. The purpose of this memorandum is to show that the differences relied upon by appellants between this case and the *Filburn* case are either nonexistent or of no legal significance.

A. THE FILBURN CASE IS NOT DISTINGUISHABLE ON GROUNDS OF ESTOPPEL

It is contended by appellants that the case at bar is to be distinguished from the *Filburn* case on the ground that appellants did not receive any benefits under the Agricultural Adjustment Act of 1938, as amended (7 U. S. C., Sections 1281, 1331–1339, 1361–1368, 1388, and Supp. I, Section 1340), but, on the contrary, were injured thereby. It is asserted that the Court in the *Filburn* case did not pass upon the constitutional

questions raised, but merely held the appellant estopped from questioning the constitutionality of the Act because he had received some benefits thereunder. *Wickard* v. *Filburn* affords no foundation whatsoever for these assertions.

The *Filburn* opinion, after the introductory statement of the case, is divided into three parts. In the first part, the referendum was held to be valid. In the second part, the Court sustained the Act as a valid exercise of the power granted to the Congress under the Commerce Clause of the Constitution. The third part dealt with the argument that the Act and regulations were unconstitutional because inconsistent with the due process clause of the Fifth Amendment. In disposing of this contention, the Court said (317 U. S., at 131):

> We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes.

The Court also declared, in dealing with the contention that the Act was being retroactively applied in violation of due process (317 U. S., at 133):

> That appellee is the worse off for the aggregate of this legislation does not appear; it only appears that, if he could get all

> that the Government gives and do nothing that the Government asks, he would be better off than this law allows. To deny him this is not to deny him due process of law. Cf. *Mulford* v. *Smith*, 307 U. S. 38.

It is upon the quoted passages that appellants base their argument that the *Filburn* case held only that Filburn personally was estopped from challenging the validity of the Act. Read in their context, however, it is clear that these passages were intended merely to show that the operation of the aggregate of federal legislation pertaining to wheat would not impose any severe burdens upon even the noncooperative farmer. No question of estoppel was raised in the *Filburn* case, and there was no showing that Filburn personally had sought any benefits available to farmers under the Federal Agricultural programs. The benefits referred to by the Court were those which would naturally be expected to inure to farmers generally from the operation of a wheat-quota system, including price-pegging crop loans, intended to increase the market price of wheat.

Appellants apparently contend that Filburn received benefits under the Act which they did not receive. Nothing in the *Filburn* record supports this suggestion. There is no basis for the statement in appellants' brief (p. 6) that "Filburn in his stipulation *erroneously* admitted that he had received benefits and higher prices for his wheat under the AAA program." The stipulation con-

tained no admission, erroneous or otherwise, that Filburn himself had received any special benefits. It did contain evidence that general market prices for wheat, supported by nonrecourse loans, were higher than they would otherwise have been, but this evidence was not connected with Filburn's activities, and would be equally applicable to all wheat farmers, including appellants. It is thus clear that appellants received neither more nor less benefits from the operation of the Act than Filburn received. Neither Filburn nor the plaintiffs in this case, all of whom were noncooperators under the program, were entitled to the loans made to cooperators[3] or to receive agricultural conservation payments under the Soil Conservation and Domestic Allotment Act, as amended (16 U. S. C., Section 590g–590q), or parity payments under Section 303 of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C., Section 1303).

There is thus no more basis for appellants' assertion that Filburn was estopped by benefits he had received than there is for their statement that this Court's decision was based upon such

[3] Appellants, as well as Filburn, being noncooperators, were, of course, entitled to obtain Government loans on their excess wheat to the extent of 60 percent of the amount obtainable by a cooperator. Act of May 26, 1941 (par. 10 (c), 55 Stat. 203, 7 U. S. C., Supp. 1, Section 1340 (10) (c)). It does not appear that either Filburn or any of the appellants took advantage of this provision.

an estoppel rather than upon a determination of the constitutional issues.

B. THE CHALLENGE TO THE FACTS STIPULATED IN THE FILBURN CASE

Appellants attack the accuracy of the facts set forth in the legislative findings, and also insist that the District Court's findings of fact in the *Filburn* case[4] were based upon an erroneous stipulation submitted by the parties.

There can be little doubt that both the legislative findings and the stipulation of facts in the *Filburn* case are accurate. Indeed, many of the significant facts found and stipulated are of such common knowledge as to be subject to judicial notice without more, and most of such facts are derived from trustworthy official publications which are also judicially noticeable. For present purposes, however, we shall assume, contrary to the fact, that appellants' allegations (including those contained in the offer of proof) are true, except where the figures given demonstrate their own inaccuracy or are rebuttable by judicially noticeable material.

The primary "errors" which appellants claim to have found in the *Filburn* stipulation and the legislative findings relate to (1) the proportion of wheat moving in interstate and foreign com-

[4] The District Court had found the facts to be as set forth in the written stipulation of the parties (see Transcript of Record, No. 59, R. 119).

merce, (2) the existence of a wheat surplus, and (3) the difference between the amounts received by American farmers and the farm price of wheat sold upon the world market. We shall consider these contentions in turn.

1. *The Percentage of Wheat Moving in Interstate and Foreign Commerce.*—Neither in the *Filburn* opinion nor in the stipulation of facts was it stated that any definite percentage of the wheat crop moved in interstate commerce; indeed, we are advised that no accurate figures as to such movements are available. The Court's opinion stated merely that "commerce among the states in wheat is large and important" (317 U. S., at 125), a fact which would seem to be of common knowledge. Cf. *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1. Appellants have alleged in their complaint (par. 18), argued (Br. p. 31), and offered to prove (Br. p. 51–52, 39–40A) that "only about 38.2 per cent of our total production of wheat flows in the channels of Interstate Commerce" Br. p. 39). Inasmuch as 38 percent is a substantial proportion of the crop, and comprises a tremendous quantity of wheat, the power of Congress to regulate the price and flow of wheat would not be diminished if the percentage were in accordance with appellants' contention.

But appellants' own tabulation (Br. p. 40A) demonstrates the inaccuracy of their conclusion. Appellants have determined the amount of wheat

which moves out of the state in which it is produced by adding the excess of production over consumption in the sixteen states which produce more wheat than they consume (Br. p. 39–40A). This method of calculation assumes that all wheat produced in every state which consumes more than it produces stays within the state, and that in states producing more than they consume, only the difference moves into interstate commerce. This assumption that the wheat industry is so compartmentalized that wheat never crosses state lines except in moving from a state producing a surplus to a state which consumes more than it produces is utterly baseless. This can be demonstrated from appellants' own tabulation.

In appellants' computation no state producing less wheat than it consumes is credited with shipping any of its wheat in interstate commerce. That this does not conform to the facts can be shown by using Maryland as an example. Appellants' table (Br. p. 40–A) shows that Maryland produced 7,586,000 bushels[8] (column 1) and consumed 8,412,000 bushels (column 2), 6,330,000 of this being consumed as food (column 11). But Maryland mills ground only 2,339,000 bushels (column 5). If, as appellants assume, Marylanders consumed Maryland wheat to the extent possible, they must have sent the difference between the

[8] Appellants' figures are for the average of the five-year period 1931–1932 through 1935–1936 (Br. p. 40–A).

amount consumed in Maryland as food and the amount milled in Maryland across State lines for milling. Thus, at least this amount of wheat—3,991,000 bushels—moved in interstate commerce from Maryland, although on appellants' theory no wheat moved in interstate commerce from that state.

A similar illustration will demonstrate the error in appellants' assumption that in a state producing a surplus of wheat only the amount of the surplus moves in interstate commerce. Ohio produced 41,936,000 bushels (column 1) and consumed 39,372,000 bushels (column 2). Appellants accordingly included the difference, 2,564,000 bushels (column 4), as the amount of wheat moving in interstate commerce from Ohio. But whereas Ohio mills ground only 16,122,000 bushels (column 5), Ohioans consumed as food 24,098,000 bushels (column 11). Even if, as appellants assume, Ohioans consumed only Ohio wheat, at least 7,976,000 bushels must have been shipped out of the state for milling and returned to Ohio for consumption. The amount shipped in interstate commerce from Ohio must therefore have been almost 8,000,000 bushels as contrasted with the 2,564,000 bushels included in appellants' computation.

It is obvious from these examples that appellants' computation as to the proportion of wheat moving in interstate commerce is erroneous, and that the percentage is much greater than appellants suggest.

2. *The existence of excessive supplies of wheat.*—Appellants contend that there has been no surplus or abnormal supply of wheat since 1933, and that the congressional findings and the *Filburn* stipulation are erroneous in so far as they conclude that there have been wheat surpluses. The argument is based upon statistics covering the crop years 1933–1940 (Br. pp. 41–42A, 48–49). Congress did not, however, find in Section 331 of the Act that there was an existing surplus or abnormal supply of wheat. Its findings were that both abnormally excessive and abnormally deficient supplies of wheat burdened commerce, that the provisions of the Act were necessary to minimize recurring surpluses and shortages and to provide for the maintenance of adequate reserve supplies, and that the provisions for regulation of marketings by producers of wheat "*whenever an abnormally excessive supply of such commodity exists* are necessary in order to maintain an orderly flow of wheat in interstate and foreign commerce under such conditions" (italics supplied).[8] The Act (Section 335) then provides that quotas shall be established only when the Secretary finds that the total supply (defined as carry-over plus estimated production (Section 301 (b) (16) (A))) at the beginning of any marketing year will exceed a normal year's domestic consumption and exports by more than 35 percent. Thus the Act does not assume or find that there was an excessive supply when it was

[8] See also H. Rept. 1645, 75th Cong., 2d sess., pp. 1–2, 28–34.

passed or in any particular year; it provides merely that the regulatory provisions shall become operative when and if such a supply comes into existence.

No quotas were in effect for the crop years 1938, 1939 and 1940. This case involves the quotas for the crop year 1941, the first year in which they were established.

Appellants' tabulation (Br. p. 42A) covers the crop years 1933–1940. It may be true that there were no excessive surpluses during those years—but that can hardly prove that no such excess existed in 1941. Indeed, appellants' table (Br. p. 42–A) shows that by the end of the 1940 crop year (June 30, 1941) the carry-over (Column 13) was 411,-000,000 bushels, much greater than in any of the preceding years; the total amount consumed and exported during the crop year 1940 was 707,-000,000 bushels, which was approximately the average for the preceding seven years (Column 5). Thus on the evidence tendered by appellants there was a carry-over of approximately 58 percent of the consumption and exports during the preceding year when the 1941 crop year began, a percentage much higher than that existing during any of the other years covered by appellants' tabulation. Appellants' figures thus do not prove that there was no surplus for the year 1941 but the contrary. They are entirely consistent with the stipulation in the *Filburn* case and obviously do not contravene the congressional findings, inasmuch as Con-

gress made no finding as to the existence of a surplus in any particular year.[7]

3. *Comparison of American and world prices.*—Appellants claim (Br. pp. 4, 8, 49) that the stipulation of facts in the *Filburn* case erred in stating that the consequence of the wheat program was to give farmers a price of $1.16 per bushel on their wheat as contrasted with the world price of approximately 40¢.[8] It is contended that "this stipulation was incorrect and untrue at both ends" (Br. p. 8), and that two of appellant-farmers would testify that the stipulation was based upon "fake statistics" (Br. pp. 45–47). Neither the stipulation in the *Filburn* case nor this Court's opinion (317 U. S., at 126) stated that the farm price was raised to $1.16 per bushel. They did

[7] Appellants' argument (Br. pp. 4–5) that the Department of Agriculture statistics as to the existence of surpluses ignore the increase of population has no basis. The figures employed by the Department are based upon actual consumption and exports. The failure of these figures to attribute the same per capita consumption of wheat to each inhabitant of the United States in 1935 as in 1900 is not due to Departmental caprice or stupidity, as appellants imply, but to an actual decline in the per capita consumption of wheat. This has not been caused by an insufficient wheat supply, but by changes in dietary habits.

[8] The *Filburn* stipulation stated (Transcript No. 59, R. 71): "For the 1941 crop, the wheat conservation and parity payments again amount to 18 cents a bushel but the loan has been raised to 85 percent of parity and is estimated to average about 98 cents a bushel. Consequently, during 1941 cooperators in the wheat program will receive an average price on the farm approximating parity or about $1.16 a bushel, as compared with a price of about 40 cents a bushel if the wheat were sold on the basis of a world market."

state, accurately, that the *cooperating* farmer could receive an average price of $1.16 per bushel. This amount was composed of the nonrecourse [9] loan of 98¢ per bushel, which appellants concede (Br. pp. 4, 49) to have been available to each cooperator, and the parity and soil conservation payment of 18¢ per bushel which was also available to cooperators. Appellants claim that the domestic price of wheat during the period here in question was 85¢ to 90¢ per bushel (Br. p. 4). It may be conceded that this was the general price available to noncooperating farmers and to cooperators if they sold their wheat on the market without taking advantage of the Government loan. This fact is not inconsistent with the statement in the Filburn stipulation that cooperating farmers could obtain $1.16 per bushel for their wheat. And, indeed, it would seem obvious that the noncooperating farmers were able to obtain 85¢ to 90¢ for the wheat they sold only because of the price-pegging effect of the 98¢ loan available to the farmers who cooperated.

Appellants assert (Br. pp. 8, 49) that the stipulation that the world price was 40¢ per bushel during the period was untrue. To support this charge they quote prices at Winnipeg, Canada, as 64¢–72¢ per bushel and on the Liverpool market [10] at 84¢–92¢. Assuming these figures to be accurate,

[9] See Section 302 (h).

[10] We are advised that since the war began in 1939 the Liverpool market has been closed, and so far as we know there were no published Liverpool price quotations for the period in question.

they represent prices at these markets and not prices to the farmer. Rail and ocean freight rates and the cost of insurance must be subtracted from these amounts to ascertain the return to the farmer, and these costs are, of course, considerable in so far as shipments to Europe during the war are concerned.[11] Thus the prices upon which appellants rely are not comparable to the farm price of 40¢ referred to in the Filburn stipulation. Moreover, in Canada wheat prices are not free, but, as this Court noted in the *Filburn* case (317 U. S., at 126n), are controlled by the Canadian Wheat Board.[12] It is thus apparent that appellants' figures do not support the grave charge that the 40¢ figure was untrue.

That the farm price on the world market was approximately 40¢ per bushel is indicated by judicially noticeable publications. The farm price

[11] The North Atlantic UK Freight Conference Schedule of Minimum Rates and Tariff Rules (No. 38, page 0), *War Emergency Rates*, filed with the Maritime Commission on May 25, 1940, and still in effect, shows a rate of 13 s. per quarter (approximately 8 bushels) for wheat shipments to Great Britain. At the rate of exchange in effect in June 1941, this amounted to 32.78¢ per bushel. Proportional rail rates from Chicago to New York for grain for export were 17.5¢ per hundred pounds or 10.5¢ per bushel of 60 pounds. See findings of the Interstate Commerce Commission in *Grain Proportionals, Ex-Barge to Official Territory*, 246 I. C. C. 353, 365, printed in the Transcript of Record in *Interstate Commerce Commission* v. *Inland Waterways Corp.*, No. 175, this Term, after R. 18.

[12] See 4 George VI, c, 25; 6 George VI, c. 10; Patton, *Wartime Wheat Policy in Canada*, 24 Journal of Farm Economics 772 (November 1942).

in the United States in June 1941 was 83.1¢.[13] During the same month "the export indemnity which would be required to export wheat to Europe" was "about 41¢ from the Gulf" of Mexico.[14] This meant that the United States price of 83.1¢ had to be reduced, by way of Government subsidy, 41¢ before American wheat could be sold in the world market. This would indicate a comparative world price of 42¢.

Although, for the reasons stated, we believe that appellants' challenge to the figures set forth in the record is without foundation, and not even supported by appellants' own offer of proof, we do not mean to imply that the size of the discrepancy between the return to American farmers and the world price is material to the constitutionality of the Agricultural Adjustment Act. Even appellants' figures show that the cooperating American farmer secured a higher return than the world price. If the Act is a reasonable means of attempting to control interstate wheat prices and recurrent surpluses and shortages affecting interstate commerce, its validity does not depend on the amount of the difference between American and world prices, or indeed, upon whether there is any such difference at all.

---

[13] See United States Department of Agriculture, Agricultural Marketing Service, *Midmonth Local Market Price Report* (June 1941), p. 5.

[14] United States Department of Agriculture, Bureau of Agricultural Economics, *The Wheat Situation* (June 1941), p. 7.

Even more irrelevant to the constitutionality of the statute is its effect upon these appellants. Statutes, especially those dealing with a national problem of such large general importance, are not unconstitutional merely because they cause some persons financial injury (see *Wickard* v. *Filburn*, 317 U. S., at 129). Appellants assert (Br. pp. 3, 6) only that they received no benefits from the program, that, as taxpayers called upon to pay for it, they sustained a loss, and, of course, that they were injured by the imposition of the 49-cent penalty. Their loss as taxpayers, in common with all other federal taxpayers, does not give them standing to challenge the validity of the Act. *Frothingham* v. *Mellon*, 262 U. S. 447. The loss in penalties for not conforming to the statutory scheme, if in the end such losses occurred, obviously does not make the statute invalid; penalties generally have an injurious effect upon persons who do not comply with the law.

We have discussed, at perhaps unduly great length, the factual differences which appellants claim to exist between this case and the *Filburn* case, in order to demonstrate that the distinctions suggested are not even supported by the evidence tendered by appellants themselves. We think it apparent, however, that none of these distinctions has any relationship to the bases of this Court's reasoning in the *Filburn* case. Clearly the exact proportion of wheat moving in interstate com-

merce, the existence of prior surpluses, the relation between American and world prices, or the damage to individual farmers, are not controlling of the question with which this Court was primarily concerned—the need for regulating wheat consumed on the farm in order to carry out the plan of regulating trade at stabilized prices.[15]

For these reasons we submit that none of the distinctions suggested is of consequence, and that the district court properly held that even if appellants proved the facts set forth in their tender of evidence the reasoning of the *Filburn* decision was controlling. It was therefore proper for the district court to dismiss the complaint without the taking of oral testimony.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

CHARLES FAHY,
Solicitor General.

TOM C. CLARK,
Assistant Attorney General.

ROBERT L. STERN,
JOHN S. L. YOST,
W. CARROLL HUNTER,
Special Assistants to the Attorney General.

MAY 1943.

[15] This also seems to be the point primarily relied upon by appellants in their argument on the merits (Br. pp. 10–20, 31–33).

U. S. GOVERNMENT PRINTING OFFICE: 1943